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LABOUR AND EMPLOYMENT LAW
2020 WINTER TERM
CASES AND COURSE MATERIALS

VOLUME 1

Prof. Brian Langille

FACULTY OF LAW
UNIVERSITY OF TORONTO

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Table of Contents - Volume 1

Course Outline	1
Denham v. Midland Employers Mutual Assurance Ld.	9
Lian v. Crew Group Inc.	21
Ontario v. United Independent Operators Ltd. (2011),	30
Greenberg v. Meffert et al.	39
Peerless Laundry & Cleaners Ltd. v. Neal	47
K.M.A. Caterers Ltd. v. Howie	52
Hill v. Peter Gorman Ltd.	57
Wronko v. Western Inventory Service Ltd.	58
MacNeil - The Many Futures of Contracts	77
Laws v. London Chronicle Ltd.	87
Carscallen v. FRI Corp.	92
Douglas v. Kinger	94
Sataur v. Starbucks Coffee Canada Inc.	123
RBC Dominion Securities Inc. v. Merrill Lynch	127
Employment lawyers grow unnerved... Sept 28 2019	161
Krishnamoorthy v. Olympus Canada Inc.	163
Bardal v. Globe & Mail Ltd.	175
Nardocchio v. CIBC	183
Wallace v. United Grain Growers Limited (DISSENT)	187
Boucher v. Wal-Mart Canada and Pinnock	252
Malik v. BCCI	295
Christie v. York Corp.	315
Seneca College v. Bhadauria	325
Hearst Publications	328
Kubota	331
Plourde v. Wal-Mart Canada Corp.	336
Teamsters Local Union No. 31 v. FedEX	345
Pulp and Paper	363
Canada Post	366
Consolidated Bathurst Packaging Ltd	417
Polymer Corporation Ltd.	419
"Lights and Sirens" - Canadian Union of Public Employees	427
CNR v. Beatty	433
Association of Justice Counsel v. Canada (Attorney General)	439

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LABOUR AND EMPLOYMENT LAW
Winter 2020

Monday and Wednesday - 4:10-6:00, Room J125

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COURSE OUTLINE

SESSION 1 Mon. Jan. 13 **What is Labour Law?**

1. Langille, "Labour Law's Back Pages" CB 24-29

SESSION 2 Wed. Jan. 15 **The Common Law I**

A. Who is an Employee? – Common Law and Beyond

1. Kahn-Freund, Langille and Davidov, CB 228-235
2. Denham v. Midland Mutual (Q)
3. Lian v. J Crew (Q)
4. Prassl and Risak, "Uber, Taskrabbit and Co." CB 240
5. Faskens (SCC, 2014) CB 1159
6. Robichaud (SCC, 1987) CB 1150
7. United Independent Operators (OCA, 2011) (Q)
8. Tim Hortons CB 1155

SESSION 3 Mon. Jan. 20 **The Contract of Employment - II**

a) General

1. MacNeil, "The Many Futures of Contract" pp. 693-696, 720-725 (Q)

b) "Management Rights" at Common Law I – Existing "rights"

1. Greenberg v. Meffert (Q)

c) "Management Rights" at Common Law II – Changing "rights"/Constructive Dismissal

1. Peerless Laundry v. Neal (Q)
2. KMA Caterers v. Howie (Q)
3. Hill v. Peter Gorman (Q)
4. Wronko v. Western Inventory (Q)

SESSION 4 **The Common Law - III**
Wed. Jan. 24

A. Breach/ "Lesser Penalties"

1. Laws v. London Chronicle (Q)
2. Carscallan v. FRI (Q)
3. McKinley v. BC Tel (SCC) CB 274

B. Contract and Tort

1. Douglas v. Kinger (OCA, 2008) (Q)
2. Sataur v Starbucks (OCA, 2017) (Q)

C. Fiduciary Obligations/Non-Competes

1. RBC Dominion v. Merrill Lynch (SCC) (Q) (see, especially, Abella's dissent)
2. "Employment lawyers grow unnerved as the use of non-compete clauses spread across Canada" Globe and Mail; Sept. 28, 2019

D. "Successorship" at Common Law

1. Krishnamoorthy v. Olympus Canada (OCA, 2017) (Q)

SESSION 5 **The Common Law - IV – The Implied Term of Reasonable Notice**
Mon. Jan. 27

1. Carter v Bell (OCA, 1936) CB 235
2. Bardhal v. Globe and Mail (Q)
3. Machtinger v. HOJ (SCC, 1992) CB 1031
4. Cronk v. Canadian General Insurance, (including note re: Ont. CA decision) CB 298
5. Ceccol v. Ontario Gymnastic Federation CB 248
6. Nardocchio v. CIBC (Q)
7. Wallace v. United Grain Growers (SCC, 1997) CB 318
8. ***AND DISSENT (Q)***
9. Blue J. Legal Demonstration

SESSION 6 **The Common Law - V**
Wed. Jan. 29

A. Remedies

1. Keays v. Honda Canada Inc. (SCC, 2008) CB 326

(Query – does Keays overrule Wallace?)

2. Evans v. Teamsters (SCC, 2008) CB 312
3. Boucher v Walmart Canada and Pinnock (OCA) (Q)

B. "Good Faith" Developments

1. Malik v BCCI (HL, 1994) (Q)
2. Bhasin v Hrynew and Heritage Education (SCC, 2015) CB 265
3. Potter v New Brunswick Legal Aid (SCC, 2015) CB 284

SESSION 7
Mon. Feb. 3

The Common Law - VI

A. Human Rights at Common Law

1. Christie v. York (SCC, 1944) (Q)
2. Seneca College v Bhadauria (SCC, 1981) (Q)
3. Keays v. Honda (session 5)
4. Ontario Human Rights Code, s.46.1

B. Freedom of Association at Common Law

1. "Estevan 1931" CB 409

SESSION 8
Wed. Feb. 5

Collective Bargaining

A. Scope (Who is an Employee? Again)

1. Hearst Publications (USSC, 1944) (Q)
2. OLRA s.1(1)

B. "Dependent Contractors"

1. OLRA s.1(1)
2. Egg Films (NSLRB) CB 340

C. Exclusions

a) "Rational"

1. OLRA s.1(3)(b)
2. Corporation of the District of Burnaby (1974, BCLRB, (Weiler) CB 351
3. Children's Aid Ottawa-Carleton CB 364

b) "Irrational"

1. OLRA s.1 (3) a and s.3
2. See (later) – Fraser (OCA and SCC)

D. Employer

1. Pointe Claire (SCC, 1997) CB 385
2. Reread Denham v. Midland Mutual, session 2

E. Trade Unions

1. Smith & Rhuland v. Nova Scotia (SCC, 1953) CB 379
2. Kubota (Q)

SESSION 9
Mon. Feb. 10

"Recognition" and "Unfair Labour Practices"

A. Introduction

1. Re-read "Estevan" CB 409

B. "Motive" and "Non-motive ULPs

1. OLRA ss. 5, 70, 72
2. Int'l Wallcoverings (OLRB) CB 416
3. CBC v. CLRB ("Goldhawk") (SCC, 1995) CB 423

C. "The Freeze"

1. OLRA s. 86
2. Exchange Parts (USCA, 1941) CB 439 (Query - why is this case HERE?)
3. OLRA s. 12.1

SESSION 10 Wed. Feb. 12 **Unfair Labour Practices II**

A. Free Speech

1. Walmart (see now OLRA s. 11) CB 440

B. No Solicitation Rules

1. Canada Post CB 450

C. Plant Shutdown?

1. Plourde v. Walmart, (SCC, 2009) (Q)
2. UFCW v. Walmart (SCC, 2014) CB 465
3. Teamsters v. FedEx (CIRB, 2015) (Q)

D. Remedies

1. OLRA ss. 11, 96, 98
2. National Bank of Canada - both CLRB and SCC – CB 460 and 461

E. Professional responsibility of Labour Lawyers

1. LSUC v. Rovet CB 471

- READING WEEK -

SESSION 11 Mon. Feb. 24 **Bargaining Units and Certification**

1. OLRA ss. 6.1, 7, 8, 9, 10, 15
2. Elizabeth Lennon, "Organizing the Unorganized" CB 491
3. CIBC (CLRB, 1977) CB 493
4. TD Sudbury CB498
5. CB 503-506 including NSLRB decision in Michelin Tires and Langille discussing BCLRB decision in Amon Investments).
6. Reread Lian v. J Crew ("just the facts")

SESSION 12 **The Duty To Bargain**
Wed. Feb. 26

A. Content

1. OLRA s. 17
2. Devilbiss CB 543
3. Graphic Arts CB 544
4. Noranda CB 545
5. Radio Shack CB 552
6. Canada Trustco CB 559
7. Langille and Macklem, CB 562
8. Royal Oak Mines (SCC, 1996) CB 566

B. Scope

1. Pulp and Paper (BCCRB, Weiler, 1978) (Q)
2. Langille, CB 576
3. Consolidated Bathurst CB 578

SESSION 13
Mon. Mar. 2

A. The Duty To Bargain – Remedies

1. Royal Oak Mines, (SCC, 1996) CB 584
2. Egg Films (NSLRB) CB 589

B. Economic Conflict I - The Constitutional Issue

1. Alberta Reference –"The Trilogy" (SCC, 1986) CB 871
2. SaskFed (SCC, 2015) CB 972
3. Canada Post (Ont. Sup. Ct., 2016)

SESSION 14 **Economic Conflict II**
Wed. Mar. 4

A. What is a Strike? A Lockout?

1. OLRA s.1(1)

a) Strike

1. Graham Cable CB 606
2. ILA v. MEA (SCC, 1979) CB 611
3. Nelson Crushed Stone (OLRB) CB 613
4. Political Protests/"Gone Fishin'" CB 614

b) Lockout

1. Westroc Industries (OLRB, Adams) CB 620

B. Multiple Fora

1. St Anne Nakawic (SCC, 1986) CB 637
2. OLRA s.100

SESSION 15
Mon. Mar. 9

Economic Conflict III – Picketing

1. Hersees of Woodstock (OCA, 1963) CB 660
2. Pepsi-Cola (SCC, 2002) CB 663
3. Consolidated Bathurst (OLRB) (Q)

Economic Conflict IV- Employee Status, Employee Unilateral Action During a Strike

1. Rogers Cable CB 647
2. Royal York, CB 673
3. Eastern Provincial Airways CB 675
4. McGavin Toastmaster (SCC, 1976) CB 781
5. Neenah Paper (OLRB, 2006) CB 616
6. OLRA s. 80

SESSION 16
Wed. Mar. 11

Arbitration I (The Big Picture)

1. OLRA ss. 48, 49
2. Polymer Corporation (Laskin, arbitrator) (Q)
3. Young v. CNR (PC 1931) CB 694
4. Russelsteel (Arthurs) CB 708
5. "Lights and Sirens" (OCA) (Q)
6. CNR v. Beatty (Q)
7. Irving Pulp and Paper (SCC, 2013) CB 712
8. Association of Justice Counsel v. Canada (Attorney General) (SCC, 2017) (Q)

SESSION 17
Mon. Mar. 16

Arbitration II (Dismissal and other issues)

A. Dismissal

1. Wm. Scott (BCLRB) CB 740
2. New Dominion (Beck) CB 744

B. Another example – Drug Testing

1. Irving Pulp and Paper (re-read, session 16)

C. Powers of arbitrators

1. Weber (SCC, 1995) CB 750
2. O'Leary v. NB (SCC, 1995) (Q)

SESSION 18
Wed. Mar. 18

The Duty of Fair Representation (DFR) and Internal Trade Union Affairs

A. DFR

1. OLRA s.74
2. Steel v. Louisville (USSC, 1944) CB 790

3. Bukvitch CB 793
4. Atkinson CB 798
5. Rayonier CB 801

B. Internal Union Affairs

1. Berry v. Pulley (SCC, 2002) CB 830

SESSION 19
Mon. Mar. 23

The Constitutional Revolution

1. BC Health (SCC, 2007) CB 900
2. Fraser at OCA (2009) CB 925
3. Fraser at SCC (2011) CB 933
4. MPAO (SCC, 2015) CB 947
5. BC Teachers (SCC, 2016 oral judgement adopting dissenting reasons of Donald J.A. in the BCCA – here are Donald's reasons) CB 988

SESSION 20
Wed. Mar. 25

Employment Standards I

A. Introduction

1. Judy Fudge, "The New Workplace" CB 997
2. Roy Adams "Employment Standards in Ontario: An Industrial Relations System Analysis" (Q)
3. "In Sweden the Men Can Have it All" – New York Times (Q)
4. "Why can't Dads have it all?" – Globe & Mail, 17 November 2017 (Q)

B. Status

1. New Jenny Nail CB 1012
2. Dionne v Commission Scolaire des Patriotes (SCC, 2014) (Q)
3. E.S.A. ss. 4(1), 5(1)
4. Modern Cleaning Concept (SCC, 2019) (Q)

C. Hours of Work

1. Falconbridge (OCA) (Q)

D. Dismissal

1. Re-read HOJ (session 4)

E. Multiple Regimes

1. Curtis Products (Langille) (Q)

SESSION 21 **Human Rights at Work I**
Mon. Mar. 30

A. Scope

1. British Columbia Human Rights Tribunal v. Schrenk (SCC, 2017) (Q) (read dissent carefully and think of Robichaud; Session 2)

B. The Basic Framework

1. "Meiorin" (SCC, 1999) CB 1075
2. "Action Travail" (SCC, 1987) (Q)

SESSION 22 **Human Rights at Work II – "Regime Overlap"**
Wed. Apr. 1

1. Air Canada (SCC, 2006) (Q)
2. McGill Health Centre (SCC, 2007) (Q)
3. Okanagan School District Bd. (SCC, 1992) CB 1106
4. Hydro Quebec (SCC, 2000) CB 1099
5. Stewart v. Elk Valley Coal Corp. (SCC, 2017) (Q)

SESSION 23 **International/Transnational Labour Law**
Mon. Apr. 6

A. Vignette – Rana Plaza – and Canada

1. CB 196-203
2. Das v. George Weston (Rana Plaza), paras 1-5, 31-114, 520-559 (Q)

B. Trade Agreements

1. CB 158-175

C. And ... Joost Pauwelyn "Is Globalization Finally Rebalancing?"

SESSION 24 **Review**
Wed. Apr. 8

"I Fought the Law and the Law Won" or "Speaking Rationality to Power"

1. CUPE v. Ontario (SCC, 2003) (Q)